

**BEFORE THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**APPLICATION OF  
TERRENCE CHAVIS**

**BURDEN OF PROOF  
STATEMENT OF THE APPLICANT**

**I. NATURE OF RELIEF SOUGHT**

This statement and the attached documents are submitted on behalf of Terrence Allen Chavis Jr. to the Board of Zoning Adjustment for the Property known as 119 53<sup>rd</sup> St NE, IN Square 5243, Lot 0149 (hereinafter, the "Property"), in support of the application for special exemption relief, pursuant to Subtitles (D§ 304.1), (U§5201.1, (a)), and (X § 901.2 (a)) from the requirements for lot occupancy and Subtitles (D§306.2), (U§5201.1 (b)), (X§901.2, (a)) from rear yard setback requirements. Additionally, requesting use variance pursuant to Subtitles U-201.1 and X-1000.1, (b) to facilitate the development of an eight (8) unit multi-family apartment building on a vacant lot, resulting in more residential accommodations than currently offered at the Property. The Property is located in Ward 7, ANC 7C02, and zoned as R-2.

**II. JURISDICTION OF THE BOARD**

The Board of Zoning Adjustment (the "Board") has jurisdiction to grant the relief requested pursuant to Subtitles X § 901.2 of the Zoning Regulations.

**III. BACKGROUND**

**A. Description of the Property**

The Property is zoned R-2 and is a vacant corner lot on 53<sup>rd</sup> St NE, adjacent to Blaine Street NE, resulting in a large right of way for the Property. In addition, the vacant lot has access to a 15ft public alley, allowing easy entry to the parking via the alley. There is also an existing sidewalk for pedestrians to commute safely.

## **B. Description of the Surrounding Area**

The Property is located near single-family attached and semi-attached row houses on the block of Blaine Street NE. The lot is abuts an alley to the east and a row house to the south. KIPP Quest Academy Public Charter School is directly across the street from the lot. In addition, some single-family properties have been converted to walkup apartments. The property is not in a historic district.

## **C. Traffic Conditions and Mass Transit**

Benning Road Metro Station is less than 1 mile from the Property. Kelly Miller Recreation Center and the pool are a mere .3 miles from the Property. it is within walking distance of Benning Road metro and approximately a 5-minute walk to the U5 and W4 bus lines.

## **IV. PROPOSED PROJECT DESCRIPTION**

The Applicant proposes to develop an eight-unit multi-family residential unit on a vacant, undeveloped lot. Each unit will consist of two (2) bedrooms and two (2) bathrooms, and approximately 925 square feet (the "Project"). The Project features balconies for each of the above-grade units, plus landscaping and green space at the street level and a common roof deck for all residents of the Property.

The Building would be 37.9 feet, three stories, and have a common roof deck. The entrance to the Building would be from the side of the Building on an existing sidewalk via Blaine Street. Car and Pedal parking will be provided in the rear of the Building via a public alley. The public alley can be accessed via Ames Street or Blaine Street.

#### **Current Zone R-2 Regulation Proposed Relief**

<b>NUMBER</b>	<b>TYPE OF RELIEF</b>	<b>ZONING SECTIONS</b>	<b>BASIS</b>
<b>1</b>	<b>Variance</b>	<b>U-201.1 X-1000.1, (b)</b>	<b>Use as an 8-unit apartment building.</b>
<b>2</b>	<b>Special Exemption</b>	<b>D-306.2 U-5021.1, (b) X-901.2, (a)</b>	<b>Not meeting required rear yard setback.</b>
<b>3</b>	<b>Special Exemption</b>	<b>D-304.1 U-5201.1, (a) X-901.2, (a)</b>	<b>Exceeding maximum required lot occupancy.</b>

#### **V. APPLICANT SATISFIES THE BURDEN FOR SPECIAL EXCEPTION RELIEF**

The Applicant requests special exception relief pursuant to Subtitle D-306.2 and Subtitle D-304.1 from the requirements for lot occupancy and rear yard. Under Subtitle X-901.2, (a), the Board may grant special exception relief for an addition to a principal residence. The Applicant seeks relief to increase lot occupancy 7.6% above that permitted in the RF-1. Nonetheless, the proposed lot occupancy of 67.6% is within the Board's authority to grant 70% lot occupancy by special exception. Additionally, the Applicant seeks relief to decrease the rear yard to 10.5 feet, which is 9.5 feet less than the required 20-foot rear yard.

Pursuant to D.C. Code § 6-641.07(g)(2) and 11 DCMR X § 901.2, the Board is authorized to grant a special exception where it finds the special exception:

**(1) The Relief is Harmonious with the General Purpose and Intent of the Zoning Regulations and Maps**

**Response:** The special exception relief will be in harmony with the purpose and intent of the Zoning Regulations and zoning maps. The Applicant seeks to serve the missing middle and will be marketed as such. [www.missingmiddle.com](http://www.missingmiddle.com) defines this as "house-scale buildings with multiple units— compatible in scale and form with detached single-family homes—located in a walkable neighborhood." The Applicant and the project designers have endeavored to make a compatible "house-scale" form using the unique site topography and traditional architectural features of typical D.C. residential development. Although the setback requirement for the penthouse is not met at the front on Blaine Street, it is well below it on the front, back, and south facing areas. The front entrance feature along Blaine Street NE is designed as a classic "center hall" dormer, characteristic of traditional single-family homes in the area. The Penthouse height is below requirements on three (3) of four (4) sides, but that is a specific choice to allow the Property to naturally blend in with the traditional single-family homes in the area by providing a classic center hall. The relief requested would result in a visually less intrusive roof structure. The building height is 40 feet and is specifically designed to blend in with the surrounding properties.

**(2) The Project Satisfies the Special Condition of Relief Will Not Tend to Adversely Affect the Use of Neighboring Property**

**Response:** The Project will not adversely affect the use of neighboring properties, including as to light, air and privacy. The Building will be sited several feet lower (downhill) than its immediate neighbor to the south (semi-detached rowhomes at 115-117 53rd Street NE), resulting in a building height within the range of the neighboring structures. The Building design decreases the side setback towards the East. The design was careful to decrease the floor area towards the alley, where it would least affect the neighborhood design. Because the building will be sited downhill, the neighbor to the south would experience the same light footprint and air footprint as the other resident of the semi-detached homes on 53rd Street. Privacy landscaping will be installed at the property line to the south to provide an additional layer of privacy for neighbor and Property residents.

**(3) The Project Satisfies the Special Condition of 11 DCMR Subtitle X § 901.2.**

**Response:** Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific requirements for the relief are met. In reviewing an application for special exception relief, “[t]he Board’s discretion . . . is limited to a determination of whether the exception sought meets the requirements of the regulation.”

*President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 68 (D.C. 2003); *see also Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

**VI. APPLICANT SATISFIES THE BURDEN FOR VARIANCE RELIEF**

The Applicant seeks variance exemptions: one (1) variance. The burden of proof for an area variance is well established. The Applicant must demonstrate three elements:

**1. The Project Satisfies the Special Condition of Unique physical aspect or other extraordinary or exceptional situation or condition of the Property**

**Response:** In order to prove an extraordinary or exceptional condition or uniqueness, the Applicant must show that the Property has a peculiar physical aspect or other extraordinary situation or condition. *Monaco v. D.C. Board of Zoning Adjustment*, 407 A.2d 1091, 1096 (D.C. 1979). A property's uniqueness is not limited to physical aspects of the land and may be determined by "some difficulty not shared by the entire neighborhood." *Id.* at 1098. This particular Property has remained vacant for over 50 (fifty) years since the last zoning request filed in 1971, which was denied.

The Applicant seeks to serve the missing middle and will be marketed as such. [Www.missingmiddle.com](http://www.missingmiddle.com) defines this as "house-scale buildings with multiple units—compatible in scale and form with detached single-family homes—located in a walkable neighborhood." The Applicant and the project designers have endeavored to make a compatible "house-scale" form using the unique site topography and traditional architectural features of typical D.C. residential development.

As the Court of Appeals held in *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990), that variance use can arise from a "confluence of factors." that it is not necessary that the exceptional situation or condition arise from a single situation or condition of the Property. Instead, it may arise from a

"confluence of factors." b. The site's topography is a "unique physical aspect" of the site. The Building for this Project is separate from other adjacent buildings on three (3) of four (4) sides of the Property by at least 40 feet and as much as 115 feet in some areas.

This lot is in a unique position as it is located on the corner of an R-2 zone, and by merely walking across the street, you are in an RA-1 zone. The unique physical aspect of the Property has prevented the development of the Property in an area that needs affordable housing. On the other side of the street is a newly renovated school. The Building can be sited several feet lower (downhill) than its immediate neighbor to the south (semi-detached rowhomes at 115-117 53rd Street NE), resulting in a building height within the range of the neighboring structures.

In combination, all the factors above contribute to the Property being burdened by an exceptional condition. Therefore, this application satisfies Gilmartin's first prong of the variance test.

**2. The Project Satisfies the Special Condition of Resulting in practical difficulty in complying with a strict application of the Zoning Regulations.**

**Response:** It is well settled that the BZA may consider "a wide range of factors in determining whether there is an 'unnecessary burden' or 'practical difficulty.'" Gilmartin, 579 A.2d at 1711. Additionally, the BZA may consider "the severity of the variances requested and weight that request against the burden of strict compliance, and the effect the proposed variances would have on the overall zoning plan.

The use variance to build an apartment house in the R-2 zone is not against the overall zoning plan. This residential Project has apartment houses in the R-1 zone immediately across the street.

The lot occupancy variance is 5% more than the acceptable use in R-2, and it will provide housing to seven additional families than a single-family home can provide in an underdeveloped area in need of affordable housing.

The rear yard is a mere 4ft less than the zoning requirement. The side yard exceeds the eight (8) feet minimum requirement on most of the south side of the yard; as viewed from the 53<sup>rd</sup> Street sidewalk, the side setback is seven (7) feet minimum and (9) feet maximum in a small area to match the pattern of a typical rowhouse. To account for this angled Property, the Building design decreases the side setback towards the East, which gains critical floor area for the Project. The design was careful to decrease the floor area towards the alley, where it would least affect the neighborhood design. This is necessary because of the angle of the Property. The Project will provide the required front yard (plus allowable projections), have a rooftop deck, and be within walking distance of the recreation center.

The Penthouse height is below requirements on three (3) of four (4) sides, but that is a specific choice to allow the Property to naturally blend in with the traditional single-family homes in the area by providing a classic center hall. It further provides a roof over the stairs to the common roof deck for more outdoor space for the Property's residents. Although the setback requirement for the penthouse is not met at the front on Blaine Street, it is well below it on the front, back, and south facing



areas. The front entrance feature along Blaine Street NE is designed as a classic "center hall" dormer, characteristic of traditional single-family homes in the area. The relief requested would result in a visually less intrusive roof structure. The building height is 40 feet and is specifically designed to blend in with the surrounding properties.

The Property is just one parking spot short of the requirement for the zone. However, it provides three (3) bicycle parking spots. The one parking spot will not impact the area because parking is not currently an issue; it is within walking distance of Benning Road metro and approximately a 5-minute walk to the U5 and W4 bus lines.

### **3. The Project Satisfies the Special Conditions of Subtitle E § 5201.4**

In addition to the general special exception standard, the Project satisfies the special conditions for an addition in the RF-1 zone pursuant to Subtitle E § 5201.4, as follows:

***a. The light and air available to neighboring properties shall not be unduly affected;***

***Response:*** As outlined above, low set nature of the building design will minimize impacts to light and air for neighboring property, as there is only one minimally affected property. The neighboring property is unaffected in the front and rear. The natural landscaping will further minimize impact air on the affected side.

***b. The privacy and use and enjoyment of neighboring properties shall not be unduly comprised;***

**Response:** The Project will not unduly comprise the privacy of use and enjoyment of neighboring properties. As noted, the neighboring property is unaffected in the front and rear. The impact to the side yard is minimal as the low-profile building will mimic that of the rowhouses along 53<sup>rd</sup> street, much like the neighbor on the opposite side. The side yard exceeds the eight (8) feet minimum requirement on most of the south side of the yard; as viewed from the 53<sup>rd</sup> Street sidewalk, the side setback is seven (7) feet minimum and (9) feet maximum in a small area to match the pattern of a typical rowhouse. Further, the Applicant proposes privacy landscaping on the northern lot line to increase the privacy and use of enjoyment to the neighboring property.

***c. The proposed addition or accessory structure, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street or alley frontage;***

**Response:** The Project is consistent with the character, scale and pattern of homes along Blaine Street and 53<sup>rd</sup> Street. The Applicant and the project designers have endeavored to make a compatible "house-scale" form using the unique site topography and traditional architectural features of typical D.C. residential development. The Building can be sited

several feet lower (downhill) than its immediate neighbor to the south (semi-detached rowhomes at 115-117 53rd Street NE), resulting in a building height within the range of the neighboring structures. The front entrance feature along Blaine Street NE is designed as a classic "center hall" dormer, characteristic of traditional single-family homes in the area. The Penthouse height is below requirements on three (3) of four (4) sides, but that is a specific choice to allow the Property to naturally blend in with the traditional single-family homes in the area by providing a classic center hall. The relief requested would result in a visually less intrusive roof structure. The building height is 40 feet and is specifically designed to blend in with the surrounding properties. The Project will not substantially intrude on the character or scale of neighboring homes.

***d. In demonstrating compliance with paragraphs (a), (b), and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways;***

***Response:*** The architectural plans attached to this application and statement comply with this condition by providing plans, elevations and section drawings to depict the proposed Property in relation to neighboring properties and public ways.

**4. The Project Satisfies the Special Condition of No harm to the public good or the zone plan.**

The R-2 zone intends to provide for areas predominantly developed with semi-detached houses on moderately sized lots and also obtain some detached dwellings. However, for this Project, the Property is adjacent to an RA-1 zone, and the apartment house has an intentional design to help transition from the single-family zone (R-2) setback requirements to the denser RA-1 zone across the street.

Currently, several moderate-density walkup apartments infringe on the landscape of single-family detached and semi-detached homes and more significant institutional buildings (schools and churches) near the Property.

The requested variance relief would result in the development of a property that has remained undeveloped despite the changes in the neighborhood and the need for affordable housing.

**VII. COMMUNITY OUTREACH**

In accordance with ANC 7's procedures and guidelines, the Applicant contact ANC 7C02 after the application is filed. The Applicant will formally present the application to ANC 7 at its next available public meeting.

**VIII. CONCLUSION**

This application satisfies the regulatory requirements for variance relief, and the Applicant respectfully requests that the Board grant the requested relief.

Respectfully submitted,

Cherrye Jeter,

Project Manager